CANADA

RCMP PUBLIC COMPLAINTS COMMISSION

RCMP Act - Part VII
Subsection 45.46(3)

CHAIR'S FINAL REPORT

FOLLOWING A PUBLIC HEARING

Complainant:
Mr. John Farness

January 19, 1999

File N°: 2000-PCC-940860

CHAIR'S FINAL REPORT FOLLOWING A PUBLIC HEARING

I. INTRODUCTION

The Process

Under subsection 45.43(1) of the *RCMP Act,* the Commission Chair, where she considers it advisable in the public interest, may institute a public hearing to inquire into a complaint whether or not it has been investigated, reported on or otherwise dealt with by the Force. The hearing is conducted by members of the Commission assigned by the Chair and, when completed, the Panel prepares an Interim Report setting out their findings and recommendations about the complaint. That report is sent to the Solicitor General of Canada, the RCMP Commissioner and to all parties and their counsel.

Upon receipt of the Interim Report, the RCMP Commissioner is required to review the complaint in light of the report's findings and recommendations. The Commissioner must then notify the Commission Chair of any further action that has been, or will be, taken with respect to the complaint or provide his reasons for not acting on any of the findings or recommendations.

After considering the Commissioner's Notice, the Commission Chair prepares a final report setting out such findings and recommendations with respect to the complaint as she sees fit. That report is also sent to the Solicitor General, the RCMP Commissioner and to all parties and their counsel.

The Interim Report and the Commissioner's Notice

The Interim Report dated April 30, 1998, a copy of which is attached hereto as Appendix "A", was sent to the Solicitor General and the Commissioner. The Commissioner responded to the Interim Report by way of a letter to the Chair dated August 24, 1998 (the Commissioner's Notice), a copy of which is attached hereto as Appendix "B". The Interim Report includes a sufficient summary of the complaint and the evidence heard for the purposes of this Final Report.

II. FINDINGS AND RECOMMENDATIONS

I note that the Commissioner agrees with all findings of the Panel and supports part " A" of the recommendation in relation to the first allegation.

With respect to parts "B", "C" and "D" of the recommendation in relation to the first allegation, the Commissioner is not inclined to establish "...restrictive polic[ies] or guidelines that will never cover every possible situation." He prefers to rely upon the discretion of members who are guided by an "understanding [of] basic principles."

Regrettably, the Panel found, after devoting "considerable attention" to the issue, that members are, at best, "somewhat aware" that section 9 of the *Act* implies that they have obligations "seven days per week and 24 hours per day"; others do not accept this proposition and would only act on it in exceptional circumstances. The Commissioner, as noted, agrees with this finding. This apparent lack of consensus about the proper role of an off-duty officer suggests that the Commissioner's reliance on the discretion of members is misplaced when there is no understanding of the relevant "basic principles." This observation is not intended as a criticism of the members expressing an opinion on the point at the hearing; rather, it is intended to highlight the fact that members have not had the benefit of clear guidelines that would augment their understanding of the "basic principles" involved and, therefore, permit them to properly exercise their discretion.

With respect to the Commissioner's reluctance to establish guidelines "that will never cover every possible situation", I wish to emphasize that a "guideline" is defined as "a principle or criterion guiding or directing action." A guideline, therefore, does not purport to cover every possible situation. It would simply elucidate the principles that would guide members and would serve to assure the Commissioner that his reliance on member's discretion was appropriate.

Accordingly, I re-iterate the Panel's recommendation that the Commissioner should establish guidelines setting out the obligations of members when off-duty and recommend that such guidelines be circulated as soon as possible to deal with the apparent confusion among members in relation to this matter.

With respect to part "C" of the recommendation in relation to the first allegation, the Panel found that the subject member displayed poor judgment when acting as a police officer in relation to a matter in which he was "personally involved and in a state of emotion and anger." Again, as noted, the Commissioner agrees with this finding. I think it is axiomatic that the judgment of a member will be **affected** when he is personally involved in, and agitated by, an incident. In the absence of the usual professional detachment that informs member's judgment there is a significant risk that the effect on judgment will, as was the case here, be detrimental. There are circumstances, no doubt, when a member should act in his capacity as a police officer notwithstanding his personal involvement and despite the potential impact on his judgment. At a

minimum, guidelines would establish the threshold, perhaps defined in terms of the nature, or severity, of the apprehended offence, justifying action by an officer despite these risks.

Accordingly, I agree that the Commissioner should establish guidelines to assist members in determining when it is appropriate for them to discharge their responsibilities as police officers in relation to any matter where they are personally involved as a victim or witness of an alleged offence.

With respect to part "D" of the recommendation in relation to the first allegation, the Panel found that the subject member erred in not clearly identifying himself at the outset and that such error may have lead to the escalation of the incident. Again, as noted, the Commissioner agrees with this finding. Despite the error of the subject member in this case, I would expect the basic principle that an off-duty officer should properly identify himself in circumstances such as these is well understood. Accordingly, having considered the Commissioner's comments in respect of this recommendation, I am content with his response.

With respect to the recommendation in relation to the fifth allegation, I have considered the comments of the Commissioner and agree with his implicit suggestion that the nature of the complaint under investigation properly determines the scope and nature of the review and, therefore, I am content with his response.

This is my final report to the Solicitor General and the Commissioner in relation to this complaint.

Shirley Heafey
Chair

January 19, 1999

Shirley Heafey
Chair
RCMP Public Complaints Commission
P.O. Box 3423, Station "D"
Ottawa, Ontario
K1P 6L4

Attach. (2)

APPENDIX A

CANADA

RCMP PUBLIC COMPLAINTS COMMISSION

RCMP Act - Part VII
Subsection 45.45(14)

COMMISSION INTERIM REPORT

Following a Public Hearing

Into the Complaint

of

Mr. John Farness

April 30, 1998

File N°: 2000-PCC-940860

1. THE NOTICE OF DECISION TO INSTITUTE A HEARING

By a Notice of Decision to Institute a Hearing, the Chairman of the RCMP Public Complaints Commission assigned Gerry Morin, B. Richard Bell and Richard V. Gorham to conduct a hearing on complaints by Mr. John Farness with respect to the conduct of Constable J.A. Bodner, Corporal W.E. Browne and Inspector B.R.A. Meisner and other unidentified members of the North Battleford Detachment of the RCMP in the performance of their duties.

The hearing was instituted pursuant to subsection 45.43 (1) of the Royal Canadian Mounted Police Act, R.S.C. 1985, c.R-10 (hereinafter referred to as the Act). Where members of the Commission have been assigned to conduct a hearing, the members are deemed by subsection 45.45 (1) of the Act to be the Commission.

On March 5, 1996 the Commission issued a Notice of Hearing pursuant to subsection 45.45 (2) of the RCMP Act appointing May 6, 1996, at the hour of 9:00 a.m. at North Battleford, Saskatchewan as the time and place of the hearing. The hearing was convened and held in public at North Battleford, on May 6, 1996 and dealt with a number of issues, including a jurisdictional issue which has been itemized in the attached ruling on Preliminary Applications. After having heard arguments from the various parties concerning jurisdictional issues, the hearing was adjourned on May 8, 1996 and resumed by means of a conference call on August 26, 1996.

The panel members, after careful deliberation concerning the jurisdictional issue, ruled by majority vote that the hearing should proceed. The hearing was therefore reconvened and held in public in North Battleford on December 9 to December 18, 1996.

CANADA

RCMP PUBLIC COMPLAINTS COMMISSION

RCMP Act - Part VII
Subsection 45.46(3)

CHAIR'S FINAL REPORT

FOLLOWING A PUBLIC HEARING

Complainant:
Mr. John Farness

January 19, 1999

File N°: 2000-PCC-940860

Throughout the hearing in December, 1996 the Commission was assisted by the following counsel:

Commission Counsel: Mr. Ken Stevenson, Q.C

Appropriate Officer: Mr. David Bird

For Inspector B.R.A. Meisner and Corporal W.E. Browne: Mr. Jeff Baldwin

For Constable J.A. Bodner: Mr. Lorne Goddard

For Constable M.W. Doratti: Mr. Silas E. Halyk and Ms. Catherine Knox

For Mr. John Farness: on his own behalf

For Ken MacKay, Q.C.: Mr. McKillop

The Commission heard from the following witnesses:

John Farness

Bruce Gibson

Robert Kenneth Leatherdale

Charles John Darwin Cronkhite

Jessica Arcand

Tania Wuttunee

Karen Diane Bodner

Blaine Joseph Landry

Kevin Joseph Kahpeaysewat

Earl David Durant

Mark William Doratti

Jeffrey Alan Bodner

Wayne Edward Browne
Bonnie Jean Clarke
Kenneth Wayne MacKay
Bernard Roy Alexander Meisner
Anthony Murdoch
Dr. C.M. Furniss
Michael Kenneth Spurgeon

2. ALLEGATION

The Notice to Institute a Hearing and assignment of hearing members provided the following list of complaints:

Allegations

Mr. Farness alleged that:

1) Since Constable Bodner assaulted him, he should have been charged with assault;

2) Constable Bodner used his personal vehicle to block the unlawful movement of Mr. Farness's vehicle;

3) Constable Bodner improperly and falsely accused Mr. Farness of a driving infraction;

4) Constable Bodner unlawfully held and imprisoned Mr. Farness in Mr. Farness's vehicle;

5) An unidentified senior member (later identified as Corporal W.E. Browne) and Inspector Meisner were neglectful in their duty for having conducted an inadequate investigation and failing to lay charges on that matter;

6) Corporal Browne deliberately hid and overlooked evidence in his investigation;

7) Inspector Meisner plotted with Tony Murdoch to:

(a) mislead the Saskatchewan Department of Justice by saying that Mr. Farness had refused mediation; and

(b) to tell the newspaper that Mr. Farness had refused mediation.

8) Inspector Meisner submitted a watered down or an untrue report to Saskatchewan Department of Justice.

3. THE EVIDENCE

At approximately 5:30 p.m. on February 24, 1994 Mr. John Farness, accompanied by his daughter Jessica, driving north on 101st Street in North Battleford, Saskatchewan made a left hand u-turn at or close to the intersection of 101st Street and 52nd Avenue with the intention of allowing his daughter to exit his vehicle on 101st Street. Mr. Farness stated that he intended to proceed easterly of 101st Street. At approximately the same time, Constable Jeff Bodner, an off duty and out of uniform member of the RCMP Highway Patrol section of the North Battleford Detachment of the RCMP, accompanied by his wife and children was proceeding south on 101st Street and approaching the intersection of 101st Street and 52nd Avenue. Fearing a collision with Mr. Farness's vehicle as it appeared to be emerging into the intersection, the Bodner vehicle executed an emergency panic stop, frightening the Bodner children, and stopping a few feet from the Farness vehicle and avoiding an accident.

Constable Bodner emerged from his vehicle and approached the Farness vehicle to address Mr. Farness through the open window of his vehicle to remonstrate with Mr. Farness about his driving skill and to declare that he had perpetrated a traffic violation by making an illegal u-turn in a controlled intersection. Constable Bodner further went on to make a demand on Mr. Farness to identify himself with his driver's licence.

Constable Bodner was not in uniform and did not present any identification and did not initially identify himself as a police officer. Mr. Farness did not realize, and did not accept, that Constable Bodner was a police officer and responded with verbal exchange (which involved some obscenities on Mr. Farness's part) and attempted to close the car window and drive off.

Constable Bodner in exercising poor judgement seized the window telling Mr. Farness that he would break it off if Mr. Farness did not cease his attempt to close the window and drive off. Mr. Farness alleges, and Constable Bodner denies, that about this point Constable Bodner punched him forcefully three times in the mouth.

As Mr. Farness continued to attempt to drive off Constable Bodner opened the vehicle door and reached in, in an attempt to stop the vehicle by shutting off the ignition or putting the vehicle out of gear. As the vehicle was still moving slowly, Constable Bodner was concerned that he would be seriously injured and in his attempt to stop the vehicle he admitted striking Mr. Farness forcefully on the chin with his elbow.

During the process of this altercation at the intersection, the Farness vehicle turned right off 52nd Avenue onto 101st Street and lodged against a snow bank a few feet from the intersection. Mr. Farness's attempt to get out of his vehicle was impeded somewhat by his seat belt and by Constable Bodner attempting to remove him from the vehicle. When Mr. Farness finally emerged from the vehicle a physical struggle ensued involving Mr. Farness punching Constable Bodner about three times in the head and face. Mrs. Bodner then came into the picture seeking to assist her husband by striking Mr. Farness on his head and back allegedly with a wrench or pliers.

Finally, Mr. Farness spit blood a few times on Constable Bodner's face and body. It became clear throughout the evidence that there were no weapons used by anybody at all and Mr. Farness stated that he exaggerated in order to get the attention of the RCMP Public Complaints Commission. This particular admission by itself would be commendable on Mr. Farness's part but then the problem arises at what point do we start believing Mr. Farness because he was most difficult to pin down in any of his answers during the examination in chief and cross-examination by all parties including the Commission members. As stated in one cross-examination, if in fact Mr. Farness is a poker player he certainly knows how "to raise the stakes" to which he has no fear of the consequences. By this time in the struggle in response to a 911 call from a citizen living near by, three RCMP cars had arrived bringing into scene Corporal W.E. Browne, Constable Doratti, Constable Landry and Constable Durant. Constable Bodner, in visible state of agitation, demanded that Mr. Farness be charged with improper driving and assaulting a Peace Officer. The RCMP officers quite properly separated Constable Bodner and Mr. Farness, and took initial statements from them, and from Mr. Farness's daughter, Jessica and Tanya Wuttunee.

During his initial statement to Corporal Browne, Constable Bodner having admitted that in his attempt to have Mr. Farness stop his vehicle he had struck Mr. Farness on his chin with his elbow. Corporal Browne concluding from this admission that it could be a case of Constable Bodner having committed an assault causing bodily harm against Mr. Farness, realized that he was required to provide Constable Bodner with a warned statement before proceeding any further with his interrogation. As the necessary forms were not readily available in his vehicle, Corporal Browne did not pursue his interrogation of Constable Bodner at that time, proposing to do so several minutes later at the RCMP detachment after Constable Bodner had taken his wife to her place of employment. Afterwards, Constable Bodner returned to the RCMP detachment and Corporal Browne agreed to postpone the warned statement until Constable Bodner had taken his children home and until he had an opportunity to consult a lawyer. It was not until 15 days later, on March 14, 1994, that Constable Bodner finally made a formal statement after which he declined, on the basis of advice from his lawyer, to answer any further questions. A statement

from Constable Bodner's wife, Karen, was not taken until March 17, 1994, 18 days after the incident.

In the morning after the incident, and on the basis of the initial report received from Corporal Browne, Inspector Meisner sent an e-mail report of the incident to the officer in charge of the Criminal Operations Division, noting that Constable Bodner had apparently punched and elbowed Mr. Farness and that possibly Mrs. Bodner had also been involved. Inspector Meisner concluded that Constable Bodner's "attack on Mr. Farness was unjustified and uncalled for" and he requested permission to refer the matter to the Saskatchewan Justice Department for possible charges against Constable Bodner.

It should be noted that at the time of the incident, after the RCMP officers had arrived and Mr. Farness had become aware that Constable Bodner was indeed a police officer, Mr. Farness had apparently suggested that perhaps the matter could be forgotten by all concerned by means of a hand shake with Constable Bodner.

After the conclusion of the incident, Mr. Farness immediately visited his family physician, Dr. Furniss, to have him attend to his injuries which Mr. Farness claimed to have involved injuries to his face, damage to his dentures and some injury to his left arm. Dr. Furniss's report, dated March 9, 1994, described those injuries as involving "pain inside his mouth and pain on the right side of his neck" manifested by spasm in his neck muscles and four bruises inside his mouth. Dr. Furniss testified at the hearing that he found no lacerations in the mouth and no evidence of bruises or swelling on Mr. Farness's face. Subsequently, on June 10, 1994, Dr. Furniss provided another medical report stating that Mr. Farness "had a poor range of motion of the left shoulder...this is likely a soft tissue injury". Subsequent to this incident, Mr. Farness indicated on several occasions his concern about compensation for the injuries he suffered, but at no time did he ever make a formal demand for compensation or indicate the amount of compensation he considered himself entitled to.

The next morning, February 25, 1994, Mr. Farness called on Inspector Meisner at the RCMP detachment office made a passing reference to the injuries he had suffered, and inquired about the process of laying charges against Constable Bodner. Inspector Meisner explained that Mr. Farness, as a citizen, had a right to lay charges or file a civil suit against Constable Bodner. He went on to explain that because Constable Bodner was an RCMP Officer, the decision whether to lay charges or not rested with the Saskatchewan Department of Justice and not with the RCMP. Inspector Meisner further explained that the process of referring the matter to the Department of Justice had already been initiated.

Insofar as possible charges against Mrs. Bodner are concerned, Mr. Farness stated to Corporal Browne on March 12, 1994, that he did not wish to have charges laid against her and as a result, the decision was made not to lay any charges against Mrs. Bodner. This was again confirmed in Mr. Farness's cross-examination.

Subsequently, in various correspondence to the Public Complaints Commission and in other correspondence, Mr. Farness variously alleged that Mrs. Bodner had struck him on the head with a wrench or pliers or with some object and implied that he had suffered some injury as a result. Mrs. Bodner testified at the Hearing that she had struck Mr. Farness only with her hands and in his testimony to the Hearing Mr. Farness acknowledged that she had only hit him lightly with her hands and caused him no injury. Mr. Farness explained to the Hearing that his previous references to Mrs. Bodner having struck him with some object were based on what he claimed he had been told by various unidentified individuals. He never did identify which additional individuals would have seen any weapons that were utilized. He did make reference to one of the other witnesses who was subsequently examined in chief and cross-examined by the various parties involved. That particular witness did not see any weapons whatsoever. Mr. Farness was very evasive and throughout his letter writing campaign to the RCMP and the Commission he mentioned that there were various other witnesses up to and including as many as 25. He never supplied a list to the investigating officer, Corporal Browne, nor did he provide any list to the Commission during any stage of the hearings. It is very clear that Mr. Farness never had any

additional witnesses and again it is another example of Mr. Farness making up factual situations which he might believe in his mind but do not exist anywhere else.

During the subsequent weeks, the Saskatchewan Department of Justice concluded that the evidence would not sustain a charge against Constable Bodner, and that the matter could best be handled by means of mediation through the Adult Diversion Program or be treated by the RCMP as an internal discipline matter.

An attempt to handle the matter by mediation proved unsuccessful because Mr. Farness had major uncertainties about the possibility of financial compensation for his injuries, and some mis-communication between him and Tony Murdoch, the person in charge of the Adult Diversion Program. Therefore, the matter was finally handled by the RCMP as an internal disciplinary matter. Mr. Farness was formally advised of this final disposition, but not of the precise nature of the disciplinary action, which the RCMP declined to reveal because of the requirements of the Privacy Act. Mr. Farness was not satisfied with the matter in which the RCMP, the Adult Diversion Program and the Saskatchewan Department of Justice had dealt with the matter and referred his complaints to the Public Complaints Commission on the basis of eight specific allegations. We will now deal with each of the eight allegations.

4. THE COMPLAINTS

(1) Since Constable Bodner assaulted Mr. Farness he should have been charged with assault

In his initial complaints and in subsequent allegations and testimony to the Hearing, Mr. Farness claims that Constable Bodner punched him three times in the mouth and elbowed him on the chin. Constable Bodner admitted in his warned statement, and in his testimony to the Hearing that he

did elbow Mr. Farness on the chin. However, he has denied that he punched Mr. Farness three times in the mouth.

Mr. Farness's daughter, who was in the car with Mr. Farness when the alleged punching took place, did not indicate in her initial statements that her father was punched. A careful review of her testimony indicates that either some punching or elbowing occurred. It therefore becomes very difficult to decipher whether there was actually any blows that Jeff Bodner would have inflicted on Mr. Farness. The only witness who testified at the Hearing that she had seen Constable Bodner punching Mr. Farness was Tanya Wuttunee but a review of her testimony and the different times that she stated she actually saw the incident is contradicted by Kevin Kahpeaysewat. Tanya states that it was Kevin Kahpeaysewat who alerted her to the incident outside. Mr. Kahpeaysewat in his testimony states that there was a struggle, arms were moving, but he could not definitely say if anybody was struck other than Mr. Farness by Mrs. Bodner.

Mr. Kahpeaysewat definitely thought that they were fighting and when he was asked the clear question, "did you see any hits or punches of any kind?" his answer, "I saw some arms swinging like from both parties. I know that." It is unclear as to whether or not those were actually punches or manoeuvring of the arms to get a better hold of the other individual. It seems clearer that Mr. Kahpeaysewat would have been the first person to actually see anything from the house as Tanya indicated she was alerted to the incident by the words he used. This was confirmed in his testimony.

Dr. Furniss in his observations of Mr. Farness clearly indicated that there were no swelling or bruises anywhere on the external area of Mr. Farness's face. If Jeff Bodner punched Mr. Farness a minimum of three times, it would be logical to assume that there would be bruising and/or swelling on Mr. Farness's face. Mr. Farness's lack of credibility on the point does not help the panel. In addition to the question of whether Constable Bodner assaulted Mr. Farness as alleged, there was a question of what authority did Constable Bodner, being off duty and out of uniform,

have to take the action that he did in regard to this incident and whether or not he had properly identified himself as a Peace Officer.

FINDINGS

a) It is our conclusion that there is no physical evidence that Constable Bodner punched Mr. Farness in the mouth and, to the extent that there was evidence of assault by Constable Bodner on Mr. Farness, it related only to Constable Bodner elbowing Mr. Farness in the mouth area, an action which Constable Bodner took in the belief there was a justifiable use of force to bring the Farness vehicle to a halt and avoid personal injury to himself.

b) It is clear from the evidence presented that Constable Bodner's superiors considered his escalation of the incident to be unacceptable and his action of elbowing Mr. Farness in the face to have been an excessive use of force warranting consideration as an assault causing bodily harm. On the basis of this judgement, the RCMP followed the appropriate procedures and referred the matter to the Saskatchewan Justice Department to consider laying charges on Constable Bodner. The Saskatchewan Justice Department, after full consideration of the matter, concluded that the evidence would not sustain a charge of assault but recommended that the matter be dealt with by means of mediation through the Adult Diversion Program. In the alternative, if that should not prove possible, the matter should be dealt with by the RCMP as a matter of internal discipline and subsequently this is what happened. It does not appear to be clear as to whether or not the internal disciplinary matter was dependent on the Adult Diversion Program being successful.

c) It is our conclusion, therefore, that the case of alleged assault was handled in accordance with the approved procedures and that there was no attempt by the RCMP to circumvent approved procedures or to treat the case in any manner preferential to Constable Bodner. On the contrary, we have noted with some surprise that Constable Bodner's superiors

immediately reached a conclusion that Constable Bodner had probably committed an assault causing bodily harm on the basis of the first report of the incident.

d) If in fact Constable Bodner had been given preferential treatment, the RCMP might well have charged Mr. Farness with assault, but apparently there was never any discussion of that and they gave no consideration whatsoever to Constable Bodner's request at the time of the incident that Mr. Farness be charged with assaulting a Peace Officer.

e) Based on the testimony and evidence of the witnesses at the Hearing, it is our conclusion that much of Mr. Farness's complaint was a result of misunderstanding on his part regarding the procedures that the RCMP were required to follow in dealing with a situation involving an RCMP member. The evidence shows that Inspector Meisner did explain these procedures to Mr. Farness in his correspondence with him. Had the RCMP made a greater effort to ensure that Mr. Farness fully understood these procedures and the process to be followed, some of the misunderstanding might well have been avoided and this matter could have been resolved a long time ago.

f) During the Hearing, the Commission devoted considerable attention to the question of the authority of an off duty, out of uniform RCMP Officer without official identification to involve himself in an action with a citizen. Section 9 of the RCMP Act specifies "Every officer and every person designated as a peace officer under subsection 7 (1) is a peace officer in every part of Canada and has all the powers, authority, protection and privileges that a peace officer has by law until the officer or person is dismissed or discharged from the Force as provided in this Act, the regulations or the Commissioner's standing orders or until the appointment of the officer or person expires or is revoked."

g) The broad interpretation of Section 9 of the RCMP Act implies that an RCMP Officer is a Police Officer seven days per week and 24 hours per day until such time of his/her dismissal or discharge from the Force. Apparently this has commonly been described as

the "7-24 rule". Some of the RCMP Officers questioned during the Hearing admitted being somewhat aware of this so-called rule, but none were aware that it had been officially promulgated as a rule governing Police Officers' conduct. Some Officers, who were aware of the so-called rule, testified that they personally did not accept it as a rule for Peace Officer conduct and would act on it when off duty and out of uniform only in the most exceptional circumstances.

h) All the RCMP Officers giving testimony at the Hearing stated that they were not aware of any official regulation requiring the carrying of an identification card or badge to present when acting as a Police Officer. Some acknowledged that they normally would carry some such identification on their person, others, including Constable Bodner, testified that they normally did not carry such identification on their person. Constable Bodner while off duty and out of uniform displayed poor judgement in seeking to act as a Police Officer in a matter in which he was personally involved and in a state of emotion and anger. Constable Bodner also erred in not clearly identifying himself at the very beginning of the incident, which, had he done so would probably have avoided the escalation of emotions and actions that eventually took place.

RECOMMENDATION

a) When there is a complaint concerning an alleged assault by a member of the RCMP, the RCMP should make every effort to ensure that the complainant fully understands the procedures to be followed and the process involved. Depending on the circumstances this may require more than explanations by letter and could require more extensive oral briefings and discussion.

b) The RCMP should establish clear guidelines and rules of engagement for Police Officers to act when off duty notwithstanding that discretion will still have to be utilized in the process.

c) The RCMP should establish clear guidelines and rules of engagement for Police Officers in respect of situations where the officer concerned is a party to the incident being dealt with.

d) The RCMP should establish clear policies regarding the carrying and presentation of official identification, particularly in the case of Police Officers out of uniform and off duty.

(2) **Constable Bodner used his personal vehicle to block the lawful movement of Mr. Farness's vehicle**

In Mr. Farness's complaint to the Public Complaints Commission Mr. Farness alleged that Constable Bodner had placed his vehicle in a position to prevent Mr. Farness from moving his own vehicle.

FINDINGS

At the scene of the incident Constable Bodner's vehicle made its emergency stop some distance from Mr. Farness's vehicle. Constable Bodner left his vehicle and approached Mr. Farness's vehicle to remonstrate with Mr. Farness and to demand his driver's licence or other identification. During the subsequent altercation, Mr. Farness was able to move his vehicle into the intersection and around the corner before it came to a stop on the edge of the street. At no time during this incident was Constable Bodner's vehicle in the position to block the movement of Mr. Farness's vehicle. In his testimony to the Commission Mr. Farness acknowledged that there was no evidence that Constable Bodner's vehicle in any way blocked the movement of his own vehicle, and he admitted that his allegations in this regard were made simply to stir up the Commission and the RCMP to pay more attention to his complaint. The Commission concludes therefore that there

was no substance to Mr. Farness's complaint in this regard and that in making such allegations Mr. Farness was untruthful and provided the Commission with false information.

(3) Constable Bodner improperly and falsely accused Mr. Farness of a driving infraction

It was Constable Bodner's belief that the intersection in which Mr. Farness made his u-turn was a controlled intersection in which a u-turn would have been contrary to the Highway Traffic Act. In fact, however, the intersection was not a controlled intersection, and therefore, a u-turn in that intersection would not be a violation of the Highway Traffic Act. Constable Bodner was therefore mistaken in his assumption that Mr. Farness had committed a traffic violation.

Prior to the hearing Mr. Farness, in all the statements to the Public Complaints Commission, to the media and to others, clearly admitted that he had made the u-turn in the intersection. During the hearing, however, he testified he had not made a u-turn in the intersection, but had made a left turn at the intersection and proceeded a few 100 feet in order to make a right turn into a vacant lot behind a Kentucky Fried Chicken establishment and there made another left turn back onto the street and proceeded to the intersection where the incident took place.

Based on testimony of other witnesses and an examination of distances and time involved to execute such a manoeuvre, the Commission concluded that there was no evidence to support Mr. Farness's claim of making his turn by the Kentucky Fried Chicken establishment and that he did in fact make a u-turn in the intersection as originally claimed.

FINDINGS

Based on the evidence the Commission concludes that Constable Bodner assumed, incorrectly, that the intersection in question was a controlled intersection and Mr. Farness, by making a u-turn therein, had perpetrated a driving infraction. In as much as the intersection in question is not a controlled intersection, the Commission concludes that although Constable Bodner did improperly

accuse Mr. Farness in that regard, there is no evidence to justify the allegation that Constable Bodner had "falsely" made such an accusation.

(4) Constable Bodner unlawfully held and imprisoned Mr. Farness in Mr. Farness's vehicle

In his initial complaint to the Public Complaints Commission Mr. Farness alleged that after his vehicle came to a stop against the snow bank on 101st Street, his attempt to leave the car was prevented by Constable Bodner by twisting his left arm and entangling it in the shoulder strap of the seat belt, thus holding and imprisoning him in his vehicle. However, in his testimony before the Hearing Mr. Farness acknowledged his exit from the vehicle was a combination of Constable Bodner's attempting to pull him out and an effort by Mr. Farness himself to leave the vehicle.

Each had a hold on each other, and for a brief moment Mr. Farness's left arm became entangled in the shoulder strap of the seat belt.

FINDINGS

Based on the testimony of both Mr. Farness and Constable Bodner to the Hearing it seems clear that Constable Bodner and Mr. Farness were both involved in a somewhat confused effort to have Mr. Farness exit the vehicle, after which a mutual struggle continued for a few minutes until the RCMP arrived. The Commission concludes there is no evidence that Constable Bodner unlawfully held and imprisoned Mr. Farness in Mr. Farness's vehicle.

(5) **An unidentified senior member (later identified as Corporal W.E. Browne) and Inspector Meisner were neglectful in their duty for having conducted an inadequate investigation and failing to lay charges in the matter**

In his complaint to the Public Complaints Commission Mr. Farness alleges that Corporal Browne did not conduct an adequate investigation because he failed to interview several unidentified persons whom Mr. Farness claims were witnesses to the incident. In addition he complained that as the officer in charge of the investigation, Corporal Browne failed to lay charges against Constable Bodner. Mr. Farness also alleged that Inspector Meisner was equally neglectful in his duty because he did not take action to have charges laid against Constable Bodner.

FINDINGS

Based on the evidence presented to the Commission, it is clear that both Corporal Browne and Inspector Meisner were of the view that Constable Bodner's actions were unwarranted and unacceptable and should be considered as warranting a charge of assault causing bodily harm. Immediately on the morning after the incident, Inspector Meisner recommended to his superiors that the Saskatchewan Department of Justice, which was the responsible authority in the matter involving an Officer of the RCMP, should be asked to consider a charge against Constable Bodner.

Following this recommendation the matter was referred to the Saskatchewan Department of Justice which decided, on the basis of the evidence presented that formal charges would not be justified. Insofar as Corporal Browne's investigation of the incident is concerned the Commission concludes that he erred in not taking statements from Constable Bodner and from Mrs. Bodner until several days after the incident. While the net result did not seriously detract from the investigation, statements from witnesses and participants as soon as possible after the incident occurs is always desirable. Insofar as Corporal Browne's investigation of other witnesses is concerned, the Commission concludes that he made every reasonable effort to interview available witnesses. In

his various letters of complaint to the Commission and other authorities, Mr. Farness variously referred to "2 witnesses", "several witnesses", "10 witnesses" and "25 witnesses" but at no time did he ever provide the RCMP or any other authority with their names. When asked by the Commission why he did not do so he replied that he was not paid to do police work, and when asked if he would provide the Commission with the names of such witnesses, he declined to do so.

The Commission concludes that these various unnamed witnesses were figments of Mr. Farness's imagination. Spectators that might well have come after the incident which gave rise to the actual complaint were only that, spectators, they did not witness the actual incident. Two individuals, who witnessed the incident, refused to respond to Corporal Browne's repeated request for information. The Commission also concludes that the subsequent review of the investigation undertaken by Sergeant Spurgeon would have been improved if he had actually interviewed the available witnesses rather than simply reviewing the file. This was not a reading assignment; he should have done a thorough investigation.

RECOMMENDATION

We recommend that an investigation on complaints should entail more than merely reviewing a file. As a matter of course, if not all of the witnesses to an incident have been interviewed, then they should be.

(6) <u>Corporal Browne deliberately hid and overlooked evidence in his investigation</u>

Mr. Farness's allegation that Corporal Browne deliberately hid and overlooked evidence in his investigation is based on Mr. Farness's belief that Corporal Browne did not obtain information from various unidentified witnesses. Mr. Farness is wrong in this allegation because it is clear that Corporal Browne made the effort to find witnesses and especially when he went back to Tanya Wuttunee's residence. Kevin Kahpeaysewat testified that nobody clearly asked him to see if he

witnessed anything; however, he certainly did not volunteer any information and he also wanted to avoid any contact with the Police because he had an outstanding warrant at that time.

It is clear from the evidence that Corporal Browne considered Constable Bodner's actions improper and likely subject to charges being laid by the Saskatchewan Department of Justice and that he made appropriate recommendations in that regard.

In his testimony before this Commission in May, 1996, Mr. Farness admitted that he might well have been wrong in making that accusation because of what he subsequently found out. This is another example where proper briefing by RCMP personnel who investigate these matters might well have resolved these unfounded allegations.

FINDINGS

The Commission concludes that there is absolutely no evidence that Corporal Browne deliberately hid and overlooked evidence in his investigation of the incident. There is, therefore, no substance to this allegation.

(7) **Inspector Meisner plotted with Tony Murdoch to:**
a) mislead the Saskatchewan Department of Justice by saying that Mr. Farness had refused mediation and;
b) to tell the newspaper that Mr. Farness had refused mediation

The Saskatchewan Department of Justice concluded that formal charges against Constable Bodner would not be justified. The matter was referred to mediation through the Adult Diversion Program and if, in fact, that should not be feasible this matter would then be dealt with as an internal discipline procedure within the RCMP. It is clear from the evidence that there was confusion and poor communication concerning the process of implementing the Adult Diversion Program in this particular case which gave rise to considerable misunderstanding on the part of

Mr. Farness and on the part of the authorities concerned. Initially there were some doubts on the part of the Diversion Program Administrator, Mr. Tony Murdoch, whether this incident, which possibly involved assault causing bodily harm, properly qualified for diversion as such cases in the past were deemed not to qualify. There was also confusion on the part of Mr. Farness as to the full meaning of Constable Bodner's "acknowledgement of responsibility" for the incident, which was a requirement to institute the mediation process. The acknowledgement of responsibility carried no other obligation, and whether such acknowledgement would result in some financial compensation by Constable Bodner for injuries caused to Mr. Farness was a concern to Mr. Farness. Finally, there was misunderstanding on the part of Mr. Murdoch regarding Mr. Farness's statements on mediation based on newspaper articles suggesting that Mr. Farness, in an interview, had flatly refused mediation. Mr. Farness had expressed concern and doubts about the mediation process, particularly in respect of the possible compensation for his injuries. The news article implied that he had refused mediation. Mr. Murdoch assumed that this was Mr. Farness's final position and so informed the authorities concerned that the mediation process had terminated. As a result the mediation process was not implemented and the RCMP proceeded to deal with the case as a matter of internal discipline. This was a missed opportunity for all parties.

FINDINGS

The Commission concludes that there is no evidence that Inspector Meisner and Mr. Tony Murdoch "plotted" or attempted to mislead the Saskatchewan Department of Justice or the newspaper that Mr. Farness had refused mediation. However, the Commission believes that the authorities concerned could have, and should have, made greater efforts to explain to Mr. Farness how the process was to evolve. The Commission also believes that Mr. Murdoch should not have based his judgement concerning Mr. Farness's position simply on newspaper articles. Rather, he should have had personal contact with Mr. Farness. As quoted, "Mr. Murdoch would it be fair to say that when you read the newspaper article you presumed that Mr. Farness's refusal was unconditional? The precondition approval is no longer an issue." Answer, "Yes, I suppose that

would be true because I thought that he had changed his mind by letting the story run." Question, "There was no follow-up to contact him to confirm that?" Answer, "No."

(8) **Inspector Meisner submitted a watered down or an untrue report to the Saskatchewan Department of Justice**

Mr. Farness alleges that Inspector Meisner's report to the Saskatchewan Department of Justice failed to provide a full and accurate account of the incident involving Constable Bodner. As a result of the alleged watered down and untrue report, the Saskatchewan Department of Justice decided that there was insufficient evidence to justify a charge of assault causing bodily harm against Constable Bodner. During the Hearing, Mr. Farness was not able to identify precisely any evidence that was not conveyed to the Saskatchewan Department of Justice.

There is some evidence as indicated by Sergeant Spurgeon that he did not re-interview certain witnesses to determine the adequacy of the evidence that went forward. He relied upon the reports that were done by Corporal Browne. At the same time, he makes reference to Inspector Meisner's report that Mr. Farness might well have had a change of heart in relation to how he wanted to proceed on this matter. This same reference is made in Mr. Ken MacKay's evidence that the victim's opinion was important in relation to whether or not any charges proceeded. The victim's expression of whether or not charges proceed do not always carry the day. It is still up to the personnel of the Prosecution Office to determine whether they will proceed with the case. Mr. Ken MacKay Q.C. made reference to Mr. Farness's view. He felt that this was merely an overreaction by Constable Bodner and that they would be better off if they just said sorry to each other. There is no evidence that the visit to Inspector Meisner by Mr. John Farness where Mr. Farness expressed that he wanted to proceed with criminal charges was ever communicated to Mr. Ken MacKay Q.C. The question would be whether or not that would have made any difference. Mr. MacKay, Q.C. stated that the standard for laying charges is whether or not "there is a reasonable likelihood of conviction and the charge must be in the public interest." Mr. MacKay Q.C. stated that that test was applied in making the decision whether or not to

prosecute Constable Bodner. He stated that he and his colleagues reached the conclusion that the circumstances surrounding the incident involving Constable Bodner was more of a professional conduct matter than a criminal one.

In assessing whether or not Inspector Meisner submitted a watered down or untrue report, one must bear in mind that Inspector Meisner reported to Saskatchewan Justice, in part, that he considered Constable Bodner to be "totally at fault". He reported that he concurred with the report of the investigator and that the complaint was substantiated.

In commenting upon the reports and materials submitted by Inspector Meisner to Saskatchewan Justice, Mr. MacKay, Q.C. stated that it appeared to him that the report was adequate and fairly comprehensive.

It appears that the fact that Mr. Farness changed his mind after his initial meeting with police and decided that he wanted to proceed with criminal charges would not have impacted upon the Crown Prosecutor's decision. This is evident from the testimony of Mr. MacKay, Q.C. when he opined that, if a private prosecution had been laid by Mr. Farness, the Crown would have intervened and stayed the proceeding. Given that statement by Mr. MacKay, Q.C. it is evident that the change of heart (whether to request charges be laid or not) by Mr. Farness would not have altered the decision of Saskatchewan Justice.

This Commission concludes that Inspector Meisner did not submit a watered down or untrue report to the Saskatchewan Department of Justice as alleged by Mr. Farness.

The Commission would be remiss in not expressing its concern with respect to Mr. Farness's testimony on this hearing. There appears to be little question that the basis of the complaint to the RCMP Public Complaints Commission was motivated by one thing, and one thing only, the issue of compensation.

During his testimony concerning the mediation process, Mr. Farness stated that he did not want to go to the table without knowing what he was going to be "discussing or settling for". His exact words were:

> *"I would go there and ask for $10,000.00 and find out he hasn't got it, well, you know".*

On June 8, in communicating with Tony Murdoch concerning the mediation procedure, Mr. Farness stated:

> *"I requir[sic] that Mr. Bodner state parts of his agreement that he is willing to undertake re: injuries and damages".*

In cross-examination Mr. Farness acknowledged that the issue of compensation could have caused the failure or success of the mediation process. Mr. Farness acknowledged that the problem that came up was whether or not Constable Bodner would be able to provide any compensation. Mr. Farness acknowledged that he sought compensation pursuant to the Victims of Crime Compensation Act and was told that where there is no crime there is no compensation. Mr. Farness acknowledged that, after receiving a letter from the Victims of Crime Compensation Board, he knew he had to "find another way of getting it (compensation)".

Without doubt, it was this focus on compensation that caused Mr. Farness to exaggerate the number of witnesses that he says observed the incident, exaggerate the nature of the assault upon him by Mrs. Bodner (alleging a wrench was used when he knew he was only struck with her hand), altering his story with respect to the method by which the so called u-turn was manoeuvred by him, and, generally, suggesting that he received three blows to the face at the hand of Constable Bodner when the evidence demonstrates that such blows were never made.

It is indeed discouraging to the panel when a witness provides the following justification for his exaggerations:

> *"...I had heard that anything that would stir up the Commission to do something, or the RCMP to do something - I think it was entitled to try and attempt to get their attention".*

In essence, Mr. Farness admitted before the Public Complaints Commission that he wrote down many exaggerations and untrue statements for no other purpose than to get the Commission's attention.

There is no doubt that Constable Bodner's interaction with Mr. Farness demonstrated poor judgement. Certainly Mr. Farness was successful in obtaining monetary compensation and there is some evidence to suggest this could well have been his overall goal in this whole matter. We have made our comments with respect to certain recommendations in terms of the communication that needs to occur and these are all part and parcel of Mr. Farness's continued concerted effort to have this matter resolved.

The Commission is equally concerned that the initial response of the RCMP to the Commission's decision to institute a Hearing was a concerted effort and attempt to persuade Mr. Farness to withdraw his complaint in return for an unsolicited offer to pay a substantial amount to compensate Mr. Farness for his injuries. This then gave the opportunity for counsel of the Appropriate Officer to seek to terminate the hearings on the grounds of lost jurisdiction. This effort not only frustrated the work of the Commission but also created an unfortunate public impression of seeking to hide evidence and/or cover up details of this incident. The failure to conduct a hearing could have served to tarnish Corporal Browne and Inspector Meisner who have done nothing wrong and yet would have been the subject of unchallenged allegations of Mr. Farness. The Commission is pleased to acknowledge, however, that during the December hearings the counsel

for the Appropriate Officer and the RCMP cooperated fully with the Commission in all aspects of its work.

ISSUE OF COSTS

The Appropriate Officer made a motion for costs during his summation stating that the conclusions of Sergeant Spurgeon and Inspector Tugnam in their investigation of Mr. Farness's complaint were correct conclusions as understood by them. The Appropriate Officer stated that it is their position that the complaints numbers 1, 5 and 8 should be dealt with by the panel in the same manner as the RCMP concluded in its report or essentially in the letter of March 13, 1995 from Inspector Tugnam to Mr. Farness.

Specifically, with regard to the first allegation that the RCMP did everything within its power to properly achieve laying of an assault charge against Constable Bodner. With respect to the allegations 5 and 8 there is no evidence of any neglect of duty by Corporal Browne or Inspector Meisner in conducting an inadequate investigation.

The submission of Counsel for the Appropriate Officer is that if the Chairman had taken one or both of the other measures in subsection 45.42(3), namely, requesting the Commissioner to investigate further or a further investigation by the Chairman himself, the Chairman would have concluded that this hearing was not necessary and would not have ordered it. For this reason the Appropriate Officer requests that the Public Complaints Commission should reimburse the RCMP for its costs. The Commission finds that the applicant's motion for costs shows no statutory authority or basis upon which the Commission may make an order of costs in the nature of those requested.

The last minute decision by the RCMP to pay Mr. Farness with a $10,000.00 compensation for his alleged injuries and the related attempt by the RCMP to prevent a Commission hearing clearly indicated an unfortunate attitude of unwillingness on the part of the RCMP to cooperate fully and openly with the Public Complaints Commission.

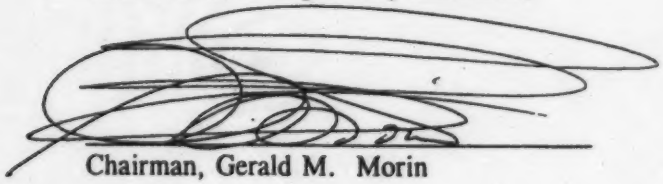
The statutory authority for a public oversight Commission such as the Public Complaints Commission serves to establish a means for the public to feel safe in making complaints with the conduct of the RCMP and provide assurances that their complaints will be taken seriously. It would cause a chilling effect if costs were awarded against the party who made complaints about the conduct of an RCMP member. The RCMP member in question admitted to having acted unprofessionally and there is no doubt that the evidence that was solicited during the

hearing brought that unprofessional conduct to the open. It is most unfortunate that perhaps the RCMP member was not able to respond to the allegations made by Mr. Farness and certainly the press coverage afforded to Mr. Farness allowed those type of allegations to fester especially in the papers. This hearing allowed for the examination and cross-examination of those allegations and as we have concluded in our report Mr. Farness is at best a good story teller and his credibility in the eyes of the Commission is very low. This in itself, assuming we had jurisdiction to make a ruling on costs which we do not, would not allow the RCMP to obtain costs in this hearing.

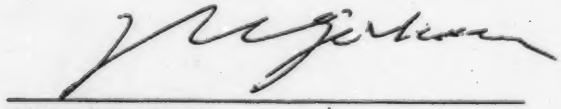
RECOMMENDATION

We make no recommendation with the issue of costs to the Chairman because it is best handled by statute in relation to what expenses are reimbursed to any and all parties who partake in these hearings.

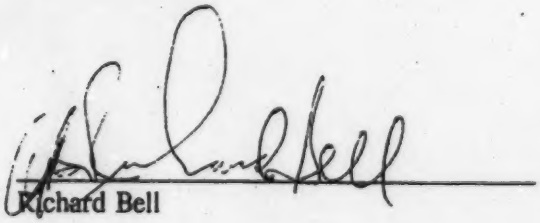
All of which is respectfully submitted,



Chairman, Gerald M. Morin



Richard Gorham



Richard Bell

RULING ON PRELIMINARY APPLICATIONS

1. THE NOTICE OF DECISION TO INSTITUTE A HEARING

By a Notice of Decision to Institute a Hearing, the Chairman of the RCMP Public Complaints Commission assigned Gerald M. Morin, B. Richard Bell, and Richard V. Gorham to conduct a hearing on complaints made by Mr. John Farness with respect to the conduct of Constable J. A. Bodner, Inspector B. R. A. Meisner, Corporal W. E. Browne and other unidentified members in the performance of their duties.

The hearing was instituted pursuant to Section 45.42 Subsection (3) Subsection (c) of the Royal Canadian Mounted Police Act, are R. S. C. 1985, c.R-10 (hereinafter referred to as the Act) where members of the Commission have been assigned to conduct a hearing, the members are deemed by Section 45.45 Subsection (1) of the Act to be the Commission.

On March 5, 1996, the Commission issued a Notice of Hearing pursuant to Subsection 45.45 Subsection (2) of The RCMP Act appointing May 6, 1996 at the hour of 9:00 o'clock in the forenoon at North Battleford, Saskatchewan as the time and place of the hearing. The hearing was convened and held in public at North Battleford on May 6, 1996, and dealt with a number of issues which will be itemized in this ruling. The Commission heard the testimony of four witnesses. Mr. Ken Stevenson appeared for the commission, Mr. Denis Scott was counsel for the appropriate officer and Mr. Jeff Baldwin was counsel for the members Inspector B.R.A. Meisner and Corporal W. E. Brown. Mr. John Farness represented himself and did not have a legal counsel. Mr. Bodner did not attend the hearings and was not represented by counsel although he had been properly notified.

2. THE COMPLAINT

The Notice of Decision to institute a hearing and assignment of hearing members provided the following narrative on the complaints:

> ***Background***
>
> *On February 24, 1994, Mr. Farness while in his car, was accosted by a male claiming to be a member of the RCMP and later identified as Constable Jeff Bodner; Constable Bodner indicated to the complainant that he had committed a traffic violation, and an altercation issued; Mr. Farness was assaulted by Constable Bodner and well as Constable Bodner's wife. While still at the scene of this incident, Mr. Farness reported the assaults to on-duty RCMP members who went there in response to a citizen's telephone call. The assaults were investigated and the file was transferred to the Saskatchewan Crown Prosecutor for*

consideration. There was some miscommunication regarding Saskatchewan Court Mediation Program, and the Crown Prosecutor decided not to proceed with the charges.

Mr. Farness reported the foregoing directly to Inspector Meisner, Officer in charge of the North Battleford detachment; Inspector Meisner's response to the allegations was that a senior RCMP Investigator had internally investigated the allegations; the conclusion of that investigation was that the matter was solely an internal matter and had been dealt with internally.

Allegations:

Mr. Farness alleges that;

(1)Since Constable Bodner assaulted him, he should have been charged with assault;

(2) Constable Bodner used his personal vehicle to block the lawful movement of Mr. Farness's vehicle;

(3) Constable Bodner improperly and falsely accused Mr. Farness of a driving infraction;

(4) Constable Bodner unlawfully held and imprisoned Mr. Farness in Mr. Farness's vehicle;

(5) An unidentified senior member (later identified as Corporal W.E. Browne) and Inspector Meisner were neglectful in their duty for having conducted an inadequate investigation and failing to lay charges in that matter;

(6) Corporal Browne deliberately hid and overlooked evidence in his investigation;

(7) Inspector Meisner plotted with Tony Murdoch to:

> *(a) mislead the Saskatchewan Department of Justice by saying that Mr. Farness had refused mediation; and*
> *(b) to tell the newspaper that Mr. Farness had refused mediation;*

(8) Inspector Meisner submitted a watered down or an untrue report to Saskatchewan Department of Justice.

Facts and Letters entered as exhibits at the start of or during the hearing:

- *October 12, 1994, Mr. Farness refers his complaint to RCMP Public Complaints Commission in Edmonton.*
- *November 2, 1994, Mr. Farness provides Public Complaints Commission with amendments to his complaint.*
- *November 9, 1994, Public Complaints Commission refers complaint to Commissioner of the*

RCMP.

- *March 13, 1995, RCMP Inspector Tugnum sends RCMP "final report" to Mr. Farness.*
- *April 25, 1995, Mr. Farness informs Public Complaints Commission of his dissatisfaction with RCMP's "final report" and requests Public Complaints Commission to review his case.*
- *April 28, 1995, Public Complaints Commission requests RCMP to provide "all relevant materials" regarding the case.*
- *April 28, 1995, Public Complaints Commission writes to Mr. Farness that a review has been initiated.*
- *January 8, 1996, Public Complaints Commission issues a Notice of Decision to conduct a hearing.*
- *March 5, 1996, Notice of Hearing for May 6, 1996 is served to all parties.*
- *March 28, 1996, RCMP Officer visits Farness to suggest a meeting with senior RCMP Officer on March 29, 1996.*
- *March 28, 1996, Inspector Cronkhite phones Mr. Dawson of Edmonton Public Complaints Commission to inform him of forthcoming meeting on March 29, 1996.*
- *March 29, 1996, RCMP Chief Superintendent Leatherdale and Mr. Gibson of the Department of Justice meet with Mr. Farness to discuss the case and offer compensation for his injuries. Mr. Farness signs a release form and a letter to PCC Public Complaints Commission advising his withdrawal of complaint.*
- *March 29, 1996, Inspector Cronkhite phones Ms. Wilson of Edmonton Public Complaints Commission to advise briefly results of March 29, 1996 meeting.*
- *March 30, 1996, Chief Superintendent Leatherdale provides Inspector Cronkhite with a report of the matter of March 29 meeting.*
- *April 1, 1996, Mr. Scott writes to Mr. Stevenson regarding Farness. Mr. Farness withdraws the complaint.*
- *April 1, 1996, Mr. Stevenson writes to Mr. Scott asking for information regarding withdrawal of complaint.*
- *April 3, 1996, Mr. Gibson writes report of meeting to with Mr. Farness.*
- *April 4, 1996, Mr. Scott writes to Chairman of Public Complaints Commission requesting that Notice of Hearing be withdrawn.*
- *April 4, 1996, Mr. Stevenson writes to Mr. Scott advising the Panel decision to have a telephone conference on April 8, requesting information.*

- *April 8, 1996, telephone conference call held and no information was received by Mr. Scott.*
- *April 9, 1996, Mr. Stevenson writes to Mr. Scott request for information and informed that the telephone conference call occurred on April 8, 1996. Mr. Scott advised that the Appropriate Officer could make application at the start of this hearing on May 6, 1996 with respect to the jurisdiction issue.*
- *April 10, 1996, Mr. Farness writes to Mr. Stevenson to explain circumstances of March 29, 1996 meeting.*
- *April 10, 1996, Mr. Farness signs note authorizing release of information concerning settlement.*
- *April 12, 1996, Mr. Delage, Legal Counsel of Public Complaints Commission advises Mr. Scott that Chairman of Public Complaints Commission functus officio and that the matters in the hands of the hearing panel.*
- *April 15, 1996, Mr. Scott submits to Mr. Stevenson a Motion to Cancel the hearing on grounds of loss of jurisdiction. (***Note** this is the information that was requested on April 4 and was not received for the April 8 conference call.*)*
- *April 24, 1996, Mr. Stevenson writes to Mr. Scott advises that the hearing will begin on May 6 and will deal with the Motion to cancel hearing.*
- *April 24, 1996, Mr. Farness writes to Mr. Stevenson that he wishes to proceed with the hearing.*

May 6, 1996, the hearing commences and after different evidence is admitted by all parties and submitted to the panel, the preliminary motions were then dealt which are the subject of this ruling.

3. PRELIMINARY APPLICATIONS AND RULINGS

It is important to highlight certain facts with respect to the applications, and they are as follows:

1. On April 1, 1996, Mr. Denis Scott, Legal Counsel for the appropriate officer, wrote to Mr. Kenneth A. Stevenson, Counsel for the Commission, and I quote as follows,

> *"Dear Mr. Stevenson,*
>
> ***Re: RCMP Public Complaints Commission Hearing***
> ***To Inquire Into Complaints of Mr. John Farness.***
>
> *The RCMP and Mr. Farness have reached a final settlement with respect to the complaint made by Mr. Farness concerning the conduct of the members of the RCMP.*

Attached is a copy of a letter dated 96.03.29, signed by Mr. Farness, in which Mr. Farness states that he is now satisfied with the RCMP's disposition of this matter and withdraws his referral of his complaint to the RCMP Public Complaints Commission.

Given those circumstances, the Appropriate Officer proposes not to respond to your letters of February 15 and March 13, 1996, and requests that the Notice of Hearing in this matter be cancelled.

Yours truly,

Denis J. E. Scott,
Legal Counsel."

cc A/Commr. B. Watt
C.O. "F" Division

Then again on April 1, 1996, a return letter was sent to Mr. Denny Scott, and I quote as follows,

"Department of Justice, Canada,
Legal Services - R.C.M.P.,
1200 Vanier Parkway,
Room G-225,
Ottawa, Ontario
K1A 0R2

Attention: Denis J. E. Scott,
Legal Counsel

Dear Sir:

Re: Public Complaints Commission Hearing
To Inquire Into Complaints of John Farness

Thank for you letter of April 1, 1996 with enclosed copy of a letter from John Farness addressed to the RCMP Public Complaints Commission dated March 29, 1996.

I would ask that by immediate fax communication, you provide us with the following:

1. *Full particulars as to the agreement reached between the RCMP and Mr. Farness in respect to this matter; and,*

2. *A full and complete history of how the agreement was reached.*

The chairman of the hearing panel has been provided with a copy of Mr. Farness' letter and your letter requesting that the Notice of Hearing be cancelled. In due course, I anticipate that you will hear from the Panel. However, since the Hearing is scheduled to

commence in 5 weeks, it is absolutely essential that we have immediate production of the information and documentation requested in our letters of February 15 and March 13, 1996. That you for your co-operation.

Yours very truly,

PRIEL STEVENSON HOOD & THORNTON

Per:
Kenneth A. Stevenson"

On April 4, 1996, a letter was then sent to the Chairman of the RCMP Public Complaints Commission, Mr. Jean-Pierre Beaulne, Q.C., and I will quote from that letter as follows:

"Mr. Jean-Pierre Beaulne, Q.C.
Chairman
RCMP Public Complaints Commission
P.O. Box 3423
Postal Station D
Ottawa, Ontario
K1P 6L4

Dear Mr. Beaulne:

Re: John Farness - PCC Hearing

On behalf of the Appropriate Officer, I wish to bring new facts to your attention concerning the above-noted matter, with a view to having you reconsider your decision to hold a hearing in this matter.

The new facts are that the complainant has now withdrawn his referral to the RCMP Public Complaints Commission of his complaint. Attached is a copy of his letter of withdrawal. It is our submission that the withdrawal of the referral puts an end to the PCC's jurisdiction in this matter as it presently stands and that the Notice of Decision to Institute a Hearing should therefore be withdrawn or cancelled.

If you wish, we could as a courtesy provide you with a copy of a reporting letter which sets out the dispute resolution context in which this turn of events came about. Before we do this, however, we require your undertaking to receive this reporting letter on a confidential basis, in order to respect the RCMP's undertaking to Mr. Farness that the terms of settlement would not be made public. Alternatively, the PCC may wish to contact Mr. Farness and obtain his release for our unqualified disclosure of the reporting letter to you.

We are of course aware that you could, pursuant to s. 45.43 of the Act, decide to assert a different kind of jurisdiction over the complaint if you consider it advisable in the public interest. We are not inviting you to do so. If you are inclined to use your authority under 45.43, we respectfully request that you share with us the reasons why you would be so

inclined and that you provide the Appropriate Officer as well as the complainant and the named members with an opportunity to be heard in writing before reaching a decision on the matter.

Your earliest attention to this matter will be appreciated.

Respectfully yours,

Denis J. E. Scott
Legal Counsel

cc *Mr. Ken Stevenson*
PRIEL, STEVENSON, HOOD & THORNTON

A/Commr. B. Watt
C.O. "F" Division"

A letter dated March 29, 1996, which was signed by Mr. John Farness goes as follows:

"R.C.M.P. Public Complaints Commission
Box 3423
Station "D"
Ottawa, Ontario
K1P 6L4

ATTENTION: Director General of Complaints

Dear Sirs:

This is to advise you that I am now satisfied with the RCMP's disposition of this matter. I withdraw my referral of the complaint to the RCMP Public Complaints Commission. Thank you.

Yours truly,

John Farness"

The Counsel for the Appropriate Officer was informed by letter on April 4, 1996, that he had an opportunity to make an application to the Panel on April 8, 1996 but he did not respond. The letter is as follows:

"Department of Justice, Canada
Legal Services - R.C.M.P.,
1200 Vanier Parkway,
Room G-225
Ottawa, Ontario,

K1A 0R2

Attention: Denis J.E. Scott,
Legal Counsel

Dear Sir:

Re: RCMP Public Complaints Commission Hearing
To Inquire Into Complaints of John Farness

I acknowledge receipt of a copy of your letter of April 4 addressed to Jean-Pierre Beaulne, Chairman, RCMP Public Complaints Commission.

This letter is by way of follow-up to the writer's conversations with your Mr. Scott on April 1 wherein we were advised that you would be providing us with full and complete particulars of the Settlement Agreement made between the RCMP and Mr. Farness as well as a complete history of the settlement process. This can be received on a confidential basis subject to obtaining Mr. Farness' consent to a complete disclosure. I am advised by Mr. Morin that the Panel members wish to discuss this matter by telephone conference on Monday, April 8th. Accordingly, I request that you provide the information to myself by 12:00 noon on Monday, April 8th so that the same might be considered by the Panel in its discussions.

As Commission Counsel, I advise that, subject to any ruling by the Panel on an application which the Appropriate Officer may wish to make to the Panel prior to the commencement of the Hearing, it is my intention to continue the Hearing process. If the Appropriate Officer wishes to make an application, the Panel should be advised of this and given appropriate notice and grounds of the application at the earliest possible date so that a teleconference can be convened to hear the application.

In view of your position that you do not intend to make production and disclosure of the information which I requested in my letters of February 15 and March 13, I intend to ask the Panel to consider a direction to yourself as to the timing of the production of the requested documentation so as to not delay the preparation of the Evidence Book and the hearing.

Yours very truly,
PRIEL STEVENSON HOOD & THORNTON

Per:
Kenneth A. Stevenson

scc - Gerald Morin
scc- Ron Dawson"

The information and submissions required by the Commission Panel was not available and therefore no decision was possible at that stage. Mr. Scott was then advised he could make the

application at the commencement of the hearing on May 6, 1996.

April 9, 1996

"Department of Justice, Canada
Legal Services - R.C.M.P.,
1200 Vanier Parkway,
Room G-225,
Ottawa, Ontario,
K1A 0R2

Attention: Denis J.E. Scott
Legal Counsel

Dear Sir:

Re: Farness Hearing

This letter is by way of follow-up to my fax communication of April 4, 1996. I understand that April 8th was a holiday for Federal Government employees; accordingly, I understand why I have not yet received from you a copy of the Settlement Agreement made between the RCMP and Mr. Farness and particulars of the settlement process. I look forward to the receipt of the same by fax communication this date.

On Monday, April 8th, members of the hearing Panel requested that I renew my request for a response to the particulars of the Settlement Agreement and process. In addition, the Panel directed me to advise yourself and the Appropriate Officer that if you wish to make an application to the Panel in respect of the representation by Mr. Farness of his withdrawal of the complaint, that the application may be made in accordance with the RCMP Public Complaints Commission Rules of Practice. If it is the intention of the Appropriate Officer to make an application, the Panel would desire that the same be done at an early date bearing in mind the Hearing is scheduled to commence on May 6, 1996. I would recommend that the application be made in writing with accompanying reasons. The Panel could then arrange an opportunity to convene the Hearing by teleconference or otherwise as it deems necessary for the purposes of dealing with any application.

We await your earliest advice.

Yours very truly,
PRIEL STEVENSON HOOD & THORNTON

Per:
Kenneth A. Stevenson.

cc Gerald Morin"

Notwithstanding the particular letter dated March 29, 1996, the Commission was still

scheduled for May 6, 1996, and was convened in North Battleford as previously scheduled.

The rules of practice under the Royal Canadian Mounted Police Public Complaints Commission state under s. 16 as follows:

4. INTERLOCUTORY MOTIONS

S. 16
(1) A party or interested person may bring before the commission in writing or orally, any issues that arises during the proceedings.
(2) A motion shall contain a clear inconcise statement of the facts, the order of thought and the grounds therefore.
(3) A written motion shall be filed with a registrar or, during the hearing, with a Hearing Process Officer and shall be served on the parties and the interested persons to the proceedings.
(4) A motion may be made orally during the hearing in accordance with the procedure established by the Commission.
(5) A motion may be disposed of by the commission in writing or orally."

The electronic media which consisted of different radio station and television stations made an application which would allow the electronic media to be present for all opening statements of all interested parties. This ruling was granted on the understanding that the electronic media would shut off the cameras and other electronic recording devices so the hearing would proceed.

The second application that was made was by Denis Scott, Counsel for the Appropriate Officer.

The crux of this argument on bias stated that the Commission had lost its jurisdiction when it was first raised with them that Mr. Farness had withdrawn his complaint. The Commission in having their Counsel investigate the contents of the agreement that was reached on March 29 between Mr. Farness and the RCMP showed their bias by asserting that they still had jurisdiction on the matter.

This matter of interluctory motions was raised with the Counsel for the Appropriate Officer, he stated that, " I didn't follow the technicality of the rule because my position in the first place was that the rules didn't matter anymore. You had lost jurisdiction." Counsel for the Commission and other Counsel present who represented other individual officers including Mr. Farness who was not represented were given an opportunity to address the issue of bias.

The Counsel for the Appropriate Officer stated that the Commission by giving instructions to the Commission lawyer, Mr. Stevenson, to obtain information related to the surrounding circumstances of the withdrawal amounted to bias and that this matter should have been raised with the Counsel for the Appropriate Officer at the time that this consideration was being

made. This would have allowed the Counsel for the Appropriate Officer to deal with that issue. Suffice it to say that no notice was given to any of the parties about the actions taken by the Appropriate Officer in sending a letter to the Commission to state that they had lost jurisdiction in hearing the matter. The May 6 sitting was the first opportunity for the other parties to address this particular issue.

In Guay v. Lafleur [1965] s. C. R. 12, the Court held that the Investigator appointed under the Income Tax Act exercises a purely administrative function. The investigation merely results in a recommendation to the Deputy Minister and makes no final determination concerning the legal rights of the persons under investigation. In Bisaillon v. Keable, [1983] 2 S. C. R. 60, the Supreme Court agreed with the Quebec Court of Appeals' conclusion that the natural justice bias rules do not apply to a Commission of Inquiry because it makes no decision but merely inquires and reports. The case cited as Spence v. Spencer and Prince Albert Board of Police Commissioners, Saskatchewan Court of Appeal, 53 Saskatchewan Reports, 35., can be distinguished on the basis that the Board of Commissioners had as part of their mandate the ability to affect the rights of the person that was before them, namely Mr. Spence. The Board of Police Commissioners would have the ability to terminate the services of Mr. Spence and although he would have a right of appeal to review that decision they were more than a Commission of Inquiry as contemplated in Bisaillon v. Keable and this matter. Therefore bias does not apply.

The Commissioners upon hearing all submissions, still considered the question as to whether or not there was a reasonable apprehension of bias. The test was based on a reasonable person test. This test enunciates that given all the facts, would a reasonable person find that there is a reasonable apprehension of bias if the panel were to review all the relevant evidence surrounding the withdrawal of the complaint in order to reach an informed decision on the issue of jurisdiction. Commissioners ruled that there is no bias with respect to the actions taken and therefore there is no reasonable apprehension of bias. The Commission went further to state that the next question with respect to the issue of jurisdiction is one that requires additional information in the circumstances surrounding the withdrawal letter which need to be reviewed and it would be necessary to look at evidence that Commission Counsel might chose to call. The Commission stated that information is relevant and that the events surrounding the decision to withdraw the complaint would have probative value which goes to the issue of jurisdiction.

The Counsel for the Appropriate Officer then took the opportunity to seek an adjournment of the hearing because he had instructions from the Appropriate Officer to seek judicial review before the Federal Court with respect to our rulings on the issue of bias.

The arguments presented were such that the motion for jurisdiction rested on the fact that the mere filing of the letter of withdrawal ended the jurisdiction of the Commission and as the appropriate officer understood it, the Commission now wanted to go behind the letter of withdrawal and that goes counter to the very motion that he had made.

The Commissioners having heard the Notice for Adjournment ruled that under the circumstances it was more appropriate to hear the evidence so that they can make the appropriate decision with respect to whether or not they had jurisdiction to continue with the hearing. Counsel for the appropriate officer would either have additional grounds to appeal or consequently if the Commission Panel agreed it had no jurisdiction, there might not be an appeal.

The Counsel for the Appropriate Officer then dealt with the issue of whether or not this Commission Panel had jurisdiction to continue with the hearing. Counsel for the Appropriate Officer stated that the letter dated March 19, 1996, which was signed by Mr. Farness informed the Public Complaints Commission as follows and I quote, "I withdraw my referral of the complaint to the RCMP Public Complaints Commission." He goes on to state that, "from that moment, this Hearing Panel lost jurisdiction to hear the complaint. He quoted s.45.32 of The Act and that section reads as follows:

> *(1) "The Commissions shall carry out such functions and duties as are assigned to it by this Act."*
> *(2) "The Commission Chairman shall carry out such functions and duties as are assigned to the Commission Chairman by this Act."*

Counsel then went on to state that the jurisdiction given to the PCC to review the complaint of Mr. Farness was the fact that Mr. Farness referred it to the Public Complaints Commission pursuant to s. 45.41 subsec.(1) of the Act. Premised on that referral, the Public Complaints Commission Chairman instituted a hearing through 45.42 subsec.(3) c. of The Act.

Upon the withdrawal of the referral, the premise behind the decision to institute a hearing no longer existed as was asserted by the Counsel for the Appropriate Officer. He then goes on to argue that Part VII of the Act gives the Complainant the right to refer a complaint to the PCC for review, and that right belongs to the complainant and inherent in that right, is the complainant's prerogative to withdraw the referral. He submits that there is no provision in Part VII of The Act which prohibits the withdrawal of referral to the PCC. In effect Counsel for the Appropriate Officer states what Mr. Farness conveyed to the Public Complaints Commission is an outright withdrawal of his referral to the Public Complaints Commission as he was entitled to do.

Section 45.42 subsec.(3) states where, after reviewing the complaint the Commission Chairman is not satisfied with the disposition of the complaint by the force or considers further inquiries warranted, the Commission Chairman may:

> *a) Prepare and send to the Minister and the Commissioner a report in writing setting out such findings and recommendations with respect to the complaint as the Commission Chairman sees fit;*
> *b) Request the Commissioner to conduct a further investigation into the complaint; or*

c) Investigate the complaint further or institute a hearing to inquire into the complaint.

The Act is silent on the issue as to whether or not a complainant can withdraw any complaint that he has initiated. The Act is equally silent as to whether or not the RCMP can initiate any further discussions with the complainant in settling this matter once a hearing has been ordered by the Commission Chairman. Upon listening to the evidence that was presented, it was quite clear that there was a meeting that occurred between Mr. Bruce Gibson, a lawyer for Department of Justice from Saskatoon, and Chief Superintendent Leatherdale.

The gist of the argument by the Counsel for the Appropriate Officer states that the complainant has ownership to the complaint by virtue of the fact that it was ordered by the Commission Chairperson to further investigate into the complaint made by Mr. Farness and that it was not a public interest hearing as contemplated by 45.43 subsec.(1).

The evidence f.om all parties involved is that the payment of $10,000.00 had nothing to do with the withdrawal of the complaint; however, the two were made on the same date, the release was signed by Mr. Farness as it relates to any further civil actions against any members of the RCMP for the injuries he sustained. He then signed a letter which, as stated previously, is very concise in his wording, and as the evidence given by Mr. Bruce Gibson, this letter was composed after consulting with Mr. Denis Scott, Counsel for the Appropriate Officer in Ottawa.

With regard to the release, Chief Superintendent Leatherdale and Mr. Gibson have asserted that the payment of $10,000.00 was only to compensate Mr. Farness for his medical injuries. However, the text of the release raises some interesting questions. In as much as these damages were caused only by Constable Bodner, why did the release specify that it applied also to Messrs, Browne, Meisner and Durantti who had nothing to do with causing physical injuries to Mr. Farness? Who is Mr. Durantti and what role did he play in this matter? His name is never mentioned anywhere else and why did the release specify for any kind of injuries or damages which suggests something broader than just physical injuries were suffered by Mr. Farness at the hands of Constable Bodner? Finally, if the release applied only to physical injuries, why did it also extend its application to the "subsequent investigation of the same"?

When questioned on this matter, Mr. Gibson was uncertain as to why this phrase was added. He testified that it was, *"just an add on line that I would put on my normal release"*, and I *"never articulated what that would be in my mind."* He also testified that he had drafted the release in consultation with the Counsel for the Appropriate Officer. It is also important to note that the limitation period had expired for Mr. Farness to start legal proceedings for his injuries.

With regard to the letter of withdrawal, Chief Superintendent Leatherdale testified that he

explained to Mr. Farness that it was up to the Public Complaints Commission to decide whether the hearing would be cancelled as a result of the letter. In making these explanations there appeared to be some general references to the Commission possibly deciding to institute a hearing under the Public Interests Provisions of s. 45.43 of The Act. However, the possible legal implications of the letter, and the details of implementing a Public Interest Hearing were not specifically spelled out and it is quite conceivable Mr. Farness could have been left with the impression that the termination of the hearing would be a matter for the Commission to decide and not simply as an automatic result of this letter. Mr. Farness was most definitely not told that the RCMP intended to use the letter in a concerted effort to terminate the hearing process.

It is relevant that the letter of withdrawal was carefully drafted so that the wording was very specific in its nature because if you compare the letter of March 29, 1996, and the wording of the Act under 45.41 states: "a complainant under subsection 45.35 subsection (1) who is not satisfied with the **disposition** of the complaint by the force or with a direction under which subsec. 45.36 subsec.(5), in respect to the complaint may **refer** the complaint in writing to the Commission for review. The Appropriate Officer knew their goal was to terminate the hearing and the wording was important. In his opening statement, Mr. Farness stated that he did not believe he had the power to stop the Commission hearing and that it was not his intention to stop the Commission hearing. One can read into this particular statement to say that once again Mr. Farness changed his mind with respect to what he wanted to do in this particular process, certainly that interpretation is open to the Commission Panel. If Mr. Farness can withdraw his complaint, can he also withdraw that withdrawal at any time such as the start of the hearing?

The Counsel for the Appropriate Officer states that it is the inherent right of the complainant to withdraw a complaint. If you extend his argument would you also be able to draw the same logical conclusion that he can withdraw that withdrawal under oath. Thus the Commission is left with a question, "Can the Commission proceed in the face of a withdrawal of the referral of the complaint if that withdrawal is withdrawn?" It begs the question, does it cause any prejudice to any party? We would assert that it does not cause prejudice, because the complaints are the same and every party had ample notice.

Chief Superintendent Leatherdale stated in his testimony about some of the eight points and more specifically with respect to the actions of Corporal Browne, having deliberately hid or overlooked evidence. In his investigation, Chief Superintendent Leatherdale stated, and I quote, *"I said I don't believe that happened."* and again on Page 244 Line 7, Leatherdale goes on to state, *"well, my best recall as I say, I'm operating from what I can best remember here that our members simply don't do that. They don't hide evidence and every piece of evidence, at least that I'm aware of, would form parts of reports is sent forward. The consequences of somebody doing that, certain are very serious, and if it becomes known, and I just don't take that into account. **I just don't believe it happens.** (my emphasis) Not to say it never has, but I don't know about it."*

In his paper, Civilian Oversight Of A National Police Force: The Key To Accountability Of The Police Force To The Community , Donald J. Sorochan, Q.C., states and I quote,

> *"The history leading up to the establishment of the RCMP Public Complaints Commission clearly shows that the RCMP Public Complaints Commission was established in a remedial effort to cure a serious erosion of the public confidence in the force. This lack of confidence had originated because of considerable evidence of police misconduct which was not properly investigated by the force. To resolve the problem, it was of fundamental importance that there be an independent body with powers to investigate alleged misconduct by the RCMP and how this misconduct was dealt with by the force."*

Chief Superintendent Leatherdale states, and makes assertions that officers do not do certain things that he is aware of. The MacDonald Commission Report, Freedom And Security Under The Law, [1981] which included an extensive survey of RCMP misconduct stated in the opening chapter,

> *"The common thread which we have detected running through these incidents is that a willingness on the part of members of the RCMP to deceive those outside the force who have some sort of constitutional authority or jurisdiction over them or their activities. We have come to this conclusion reluctantly and regretfully because in our view, it might well be the most serious charge which we are levelling against the Force in our report. Nevertheless, we are convinced the practice existed. We have received evidence that Federal Ministers of the Crown responsible for the RCMP were misled by the RCMP and that on other occasions relevant or significant information was intentionally withheld from Ministers. There is evidence that the same thing has occurred at a provincial level with respect to a Provincial Minister. There is also evidence that there was similar approach adopted by the force in dealing with senior public servants."*

Would the public find it more acceptable if a civilian oversight Commission confirmed Chief Superintendent Leatherdale's assertion that it did not happen here. Further questioning about other matters related to any plot that Inspector Meisner might have had. Chief Superintendent Leatherdale states on Page 245 Line 8.
Question: "OK. What I am interested in is, is this what you told Mr. Farness on that date?
Answer: That was my explanation as to why it was not a plot by Inspector Meisner because I have read the file and that information is in the file.
Question: Did Mr. Farness respond to your categorization of it as occurring in that fashion?
Answer: He did but I don't recall what his words were. We had some discussion about it, and I don't know that we came to a common view of what had transpired. He had his view, and I had mine based on what I read and that was my explanation of how I perceived it."(Emphasis added)

It is evident that Mr. Farness and Chief Superintendent Leatherdale did not actually resolve these allegations that Mr. Farness had made against members of the force.

There is no evidence to suggest Mr. Farness signed the letter under duress. Both Mr. Gibson

and Chief Superintendent Leatherdale testified they offered Mr. Farness time to consider the matter or to seek legal advice. Nevertheless, it does appear that there was a suggestion that if he did not accept the monetary settlement offered to him he might end up with nothing. Chief Superintendent Leatherdale's reporting memo to Inspector Cronkhite dated March 29, 1996, states "I felt we should be able to satisfy his concerns today. I explained that if the PCC hearing went ahead, we could very easily find ourselves back where we are now, that they could not make any orders for the force, simply recommendations, and then he may be faced with a civil suit later on which could take many years as we would defend it."

While the Counsel for the Appropriate Officer has emphasized that payment of money to Mr. Farness was only to compensate him for physical injuries and medical expenses, it is clear from the evidence in the testimony that the principle motivation of the March 29 meeting was to have the Commission hearing terminated. That was certainly the intent of the letter of withdrawal which Mr. Farness was asked to sign and the Counsel for the Appropriate Officer has based all of his arguments concerning loss of jurisdiction.

It is also important to note that Mr. Scott, in his letter of April 4, 1996, to the Chairman of the Commission has conceded that the Commission Chairman has an option of asserting *"a different kind of jurisdiction over the complaint"* pursuant to s. 45.43 of The Act, but he emphasizes that he is not inviting the Chairman to do so, and that he would wish to know the reason for such actions and be provided an opportunity to be heard in writing before any such decision is made. This clearly implies that any such decision by the Chairman would be met with considerable resistance and challenges which further indicates one of the RCMP's goals for the March 29 meeting was to terminate the hearing.

Counsel for the Appropriate Officer has argued that Mr. Farness' letter of withdrawal should automatically result in cancellation of the hearing process in loss of jurisdiction. This implies that the complaint is a property of the complainer and can be changed at any time the complainant chooses to do so.

Note: In this case Mr. Farness signs the letter on March 29, 1996 withdrawing his complaint. He then writes another letter on April 24, 1996, wanting the hearing to go ahead. He testifies on May 7, 1996, before the Panel, and he wants the hearing to continue.

Chapter 1 of The Commissions 1988-89 annual report to Parliament stated on Page 5 that

> *"the underlying rational for the Commission is to ensure;*
> *1. That individual members of the public will have their complaints fairly and impartially dealt with, and*
> *2. That in examining complaints, the public interest in the fair and proper enforcement of the law is taken into account."*

While the legislation was adopted to protect the public against improper police conduct and to provide a remedy in such cases. It also contains provisions to ensure fair treatment to force

members against whom allegations are made. It is important to note that any individual complaint referred to the Commission and in any hearing instituted in pursuant to s. 45.42 of the RCMP Act, that it can be categorized that there is an inherent public interest to ensure that the fair and proper enforcement of the law is taken into account. It also seems clear that once the Commission Chairman has undertaken to review an individuals complaint and to institute a hearing, it has taken on a policy significance and a public ownership exceeding the purely private interests of the complainant.

Much has been made by the Counsel for the Appropriate Officer of the difference between a hearing institute and under s. 45.42 of The Act, and that institute by a Chairman under s. 45.43 of the Act implying that the former is essentially a private complaint of no public interest and that only in the latter cases, is there a public interest to be served. It is important that the characterization on the use of the word, public interest, is best served if it can be applied in both instances, and that the only difference with an investigation or a hearing under 45.42 and 45.43, is that in a latter case, the Chairman may institute such activity without having an individual refer a complaint to the Commission.

In this regard, the following paragraphs on Page 88, 89 of the Commission 1994-95 Annual Report are relevant,

> *"There will be circumstances in which the public has a clear interest over and above that of an individual complainant. A specific complaint about conduct may raise significant questions about force policies, procedures, attitudes of training that affect many members of the public. An important issue under the Canadian Charter of Rights may be contained in a complaint. ... The nature of the complaint may be such that it is in the public interest that it be examined independently, regardless of whether of the complainant subsequently refers it to the Commission. The complaint may raise an important issue of alleged serious misbehaviour warranting independent scrutiny. There may also be occasions where a complainant will not precede because of intimidation or fear of intimidation, real or imagined. Or the complainant may lose interest."*

Therefore, notwithstanding that this hearing was not constituted under the second heading of 45.43, there are a number of public interests and policy issues involved in the Farness case which still need to be addressed and resolved. For instance, without an exhaustion of all the possible questions the Commissioners raise a number of public interest issues:

a. What limitations are there on the enforcement actions by off-duty and out-of-uniform RCMP Officers? What are their rules of engagement? Does it make a difference if the offence is indictable or summary that the off-duty officer witnesses?

b. What are the precise terms of the unwritten understanding or protocol involved by which the matter of laying charges against the RCMP Officers in Saskatchewan involved in the alleged assault, and how does it become the responsibility of Saskatchewan Department of Justice? Is there a need for a formal written policy?

c. What are the criteria and procedure of mediation under the Adult Diversion Program, and does it necessarily apply to RCMP Complaints?

d. Accusations have been made and publicized concerning alleged improper actions by senior RCMP Officers which, if unanswered, will leave a stain on the reputation of the officers concerned and a stain on the reputation of the RCMP. It is surely in the public's interest that such stain be removed if unjustified or corrective action be taken if such is necessary. Bearing in mind the RCMP's well deserved and much publicly admired and valued reputation for integrity, it is surely in the public's interest and the RCMP's interest to clarify the matter.

Because of the public interest in regard to the above various questions and aspects of the Farness complaint which go beyond the purely personal interest of Mr. Farness, there is ample justification to take the position that Mr. Farness is not the sole owner of his referral of his complaint, and that the Commissioners retain jurisdiction to conduct a hearing in all aspects of the matter regardless of the letter of withdrawal.

The undersigned Commissioners are split in their decisions and as such there is a minority decision written by Commissioner, Richard Bell. Both the Chairperson, Mr. Morin, and Commissioner, ~~Dick~~ Gorham reject the application that the Commission lost its jurisdiction. The Commissioners are unanimous in their decision to adjourn to August 26, 1996 at 12:00 noon, Central Standard Time for a conference call so the matter of Mr. Farness's complaint can be spoken to and a date fixed for the continuation of the hearing.

Commissioner ~~Dick~~ Gorham

Chairperson ~~Gerry Morin~~

APPENDIX B

Royal Canadian Mounted Police

Gendarmerie royale du Canada

J.P.R. Murray
Commissioner Le Commissaire

August 24, 1998

Protected "A"

Ms. Shirley Heafey
Chair
RCMP Public Complaints Commission
P.O. Box 3423
Station "D"
Ottawa, Ontario
K1P 6L4

Dear Ms. Heafey:

I acknowledge receipt of the interim report of April 30, 1998, file reference 2000-PCC-940860, and materials relevant to the complaint of Mr. John Farness.

On July 24, 1998, I examined the conclusions and recommendations and the following notice is provided pursuant to the Royal Canadian Mounted Police (RCMP) Act.

I agree with your findings on the eight allegations and I support part "A" of your recommendation regarding the first allegation. I will, therefore, entrust the Commanding Officer of "F" Division to ensure that when there is a complaint concerning an alleged criminal offence by a member of the RCMP, the RCMP will make every effort to assist the complainant in fully understanding the process involved. This is a practice usually expected of any member. I agree that, depending on the circumstances, this may require more explanations by letter and more extensive oral briefings and discussion.

I do not support recommendations "B", "C" and "D" pertaining to the first allegation, regarding members taking appropriate action when "off duty", when the officer concerned is a party to the incident being dealt with, and the carrying and presentation of official identification

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1200 Vanier Parkway
Ottawa, Ontario
K1A 0R2

1200, promenade Vanier
Ottawa (Ontario)
K1A 0R2

while off duty and out of uniform. It is difficult to set forth precise rules that would govern all situations. I do not support, in general, restrictive policy or guidelines that will never cover every possible situation. I trust our members are better guided by understanding basic principles.

I do not support the recommendation on the fifth allegation, as it has been clearly recognized that the original investigators took appropriate action and made every reasonable effort to interview all potential witnesses in this case. Sergeant Spurgeon's involvement in this matter was to determine whether or not the investigation was adequate, and he found it to be so.

I thank you for your advice and I look forward to receiving your final report.

Sincerely,

J.P.R. Murray